

# Exhibit 1

Declaration of Joshua H. Lee, Esq.

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF GEORGIA

3                   ROME DIVISION

4   INTERFACE, INC.; INTERFACE                   )  
5   AMERICAS, INC.; INTERFACEFLOR               )  
6   LLC; and FLOR, INC.                           )

7                   Plaintiffs and Counter        )  
8                   Defendants,                        )  
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11                   CIVIL ACTION FILE  
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1 APPEARANCES OF COUNSEL:  
2

3 On behalf of the Plaintiffs:

4 CANDICE DECAIRE, Esq.  
5 Kilpatrick Townsend & Stockton  
6 1100 Peachtree Street  
7 Atlanta, Georgia 303098 On behalf of the Defendants and Counterclaim  
9 Plaintiffs Tandus Flooring, Inc. and Tandus  
10 Flooring US, LLC:11 BARRY HERMAN, Esq.  
12 Womble Carlyle Sandridge & Rice  
13 250 West Pratt Street  
14 Baltimore, Maryland 2120115 On behalf of the Defendant and Counterclaimant  
16 J&J Industries, Inc.:17 THOMAS LUNDIN, JR., Esq.  
18 King & Spalding  
19 1180 Peachtree Street, N.E.  
20 Atlanta, Georgia 30309

21 Also Present: Kevin Gallagher, Esq.

22 Videographer: Derrick Jones  
23  
24  
25

- - -

1 CLARKE B. NELSON

2 THE VIDEOGRAPHER: This is the start  
3 of tape labeled number one in the videotape  
4 deposition of Clarke Nelson in the matter  
5 of Interface, Inc.; Interface Americas,  
6 Inc.; InterfaceFLOR, LLC; and FLOR, Inc.  
7 versus Tandus Flooring, Inc., Tandus  
8 Flooring US, LLC, case number  
9 4:13-CV-00046-WSD, and Interface, Inc.;  
10 Interface Americas, Inc.; InterfaceFLOR,  
11 LLC; and FLOR, Inc. versus J&J Industries,  
12 Inc., case number 4:13-CV-00047-WSD.

13 The deposition is being held at  
14 Kilpatrick Townsend & Stockton,  
15 1100 Peachtree Street, Atlanta, Georgia, on  
16 May 31st, 2013, at approximately 9:39 a.m.

17 My name is Derrick Jones. I'm the  
18 legal video specialist for TSG Reporting.  
19 The court reporter is Suzanne Beasley in  
20 association with TSG Reporting.

21 Will counsel please introduce  
22 yourselves.

23 MS. DECAIRE: Candice Decaire from  
24 Kilpatrick Townsend & Stockton, LLC, on  
25 behalf of the plaintiffs and the witness.

1 CLARKE B. NELSON

2 MR. HERMAN: Barry Herman from  
3 Womble Carlyle on behalf of Tandus, the  
4 Tandus defendants.

5 MR. LUNDIN: Tom Lundin with  
6 King & Spalding representing defendant  
7 J&J Industries.

8 MS. DECAIRE: And I will note that  
9 with me with is Kevin Gallagher of  
10 Interface, the plaintiff.

11 (The signature of the witness to the  
12 deposition was reserved.)

13 CLARKE B. NELSON,  
14 having been duly sworn, was examined and testified  
15 as follows:

16 EXAMINATION

17 BY MR. HERMAN:

18 Q. Good morning, Mr. Nelson.

19 A. Good morning.

20 (Exhibits 37, 38, 39 and 40 were  
21 marked for identification.)

22 BY MR. HERMAN:

23 Q. I've placed in front of you what's been  
24 marked as Defendant's Exhibits 37 through 40.  
25 Defendant's 37 is the declaration that you submitted

1 CLARKE B. NELSON

2 end of the day, what's your opinion?

3 A. Again, my role is not necessarily to give  
4 an opinion of irreparable harm in this matter. My  
5 understanding is that that's a legal conclusion --

6 Q. Okay.

7 A. -- ultimately for the Court to make. My  
8 role and my scope of my assignment was to look at a  
9 number of economic considerations and factors that  
10 may be relevant and assist the trier of fact in  
11 making its determination of that conclusion.

12 Q. Well, if you're not giving an opinion,  
13 then how is that going to help the trier of fact?

14 MS. DECAIRE: Object to the form.

15 THE WITNESS: There are a number of  
16 economic considerations or indicia that are  
17 perhaps commonly considered that I'm aware  
18 of that Courts have often looked at in  
19 similar types of matters in similar types  
20 of issues, and therefore, I was asked to  
21 analyze those factors and considerations,  
22 those economic indicia, if you will, and  
23 present those in the declaration.

24 I think that assists the trier Court  
25 in understanding what those issues may be

1 CLARKE B. NELSON

2 and understanding what considerations may  
3 exist, both qualitative and quantitative,  
4 it may take into consideration when it  
5 makes its decision.

6 BY MR. HERMAN:

7 Q. Other than the Miche Bag case that you  
8 referred to earlier, have you ever submitted a  
9 similar type declaration in connection with a  
10 preliminary injunction motion?

11 A. Yes.

12 Q. What case was that?

13 A. It's called ICON Health & Fitness versus  
14 Johnson, maybe Health Tech North America. There may  
15 be some variations to that part of the Johnson name.

16 Q. Can we call it the ICON case?

17 A. Sure.

18 Q. What's the status of that case?

19 A. It's still pending.

20 Q. Was there a Daubert motion filed against  
21 you?

22 A. Yes.

23 Q. Did you read it?

24 A. Yes.

25 Q. In your words, what was the argument made

1 CLARKE B. NELSON

2 A. I do.

3 Q. Do you believe that to be true?

4 A. It's a statement by Mr. Gerson. I  
5 certainly accepted his representation of that to be  
6 true. I don't have a legal opinion as to whether or  
7 not it's true or not, but I've accepted his  
8 representation as a representative of Interface.

9 Q. Did you test that statement?

10 MS. DECAIRE: Object to the form.

11 THE WITNESS: Yes, I believe so.

12 BY MR. HERMAN:

13 Q. Do you know when Collins & Aikman's peel  
14 and stick product came out?

15 A. I don't recall.

16 Q. If I told you it was in the late 1980s,  
17 would that surprise you?

18 A. Not necessarily.

19 Q. Do you know when Milliken's TractionBack  
20 product came out?

21 A. I don't recall the date, no.

22 Q. If I told you that was roughly the 2003  
23 timeframe, would that surprise you?

24 A. Say the date again.

25 Q. 2003.



1 CLARKE B. NELSON

2 key sales differentiator, as a unique selling  
3 proposition, if you will.

4 I looked at that from Interface's  
5 perspective and then also looked at it from the  
6 defendant's perspective as well with the information  
7 that I had available to see if there was consistency  
8 there in that type of installation and the apparent  
9 importance of that to the parties, and found that to  
10 be the case.

11 Q. So you believe that Tandus believes that  
12 the '473 patent is a key sales differentiator for  
13 Interface?

14 MS. DECAIRE: Object to the form.

15 THE WITNESS: I would say I can't  
16 opine on what Tandus itself believes, but I  
17 can look at their -- or at its marketing  
18 and promotion material, the public  
19 information that's been available to me  
20 thus far, and certainly expect to look at  
21 additional discovery, that as I understand  
22 it, is starting to trickle in in this  
23 matter to further educate my understanding  
24 of that issue.

25 ///

1 CLARKE B. NELSON

2 BY MR. HERMAN:

3 Q. Did you test either of those statements?

4 A. Yes.

5 Q. How?

6 A. I had discussions with Mr. Hill and  
7 Mr. -- do you pronounce it Sedlacek?

8 Q. Yes. I got corrected several times on the  
9 record. So, yes, I'm very familiar with how to  
10 pronounce it now.

11 A. I'm sorry to hear.

12 Q. I was kidding, by the way. For the  
13 record, that was --

14 A. Sorry. What's the pending question?

15 Q. I'll just ask again. Did you test the  
16 statements of Mr. Hill and Mr. Sedlacek --

17 A. Yes.

18 Q. -- that we just read paragraph in 76 of  
19 your declaration?

20 A. Yes, I did.

21 Q. How did you do that?

22 A. A combination of interviews and  
23 discussions with both of those individuals;  
24 interviews with other account -- or at least another  
25 account executive; an examination of the

1 CLARKE B. NELSON

2 documentation that's available to me; the marketing  
3 and promotional material certainly in particular  
4 comes to mind, to determine whether that was  
5 consistent with those statements; an understanding of  
6 Mr. Hill and Mr. Sedlacek's interactions with  
7 customers and/or dealers, to understand again that  
8 relationship of TacTiles and how they use TacTiles to  
9 further their sales efforts.

10 Q. Mr. Sedlacek's statement in particular is  
11 a pretty incredible statement, isn't it, on its face?

12 MS. DECAIRE: Object to the form.

13 THE WITNESS: I don't know.

14 BY MR. HERMAN:

15 Q. "In 23 years, TacTiles connectors are by  
16 far the most powerful selling tool Interface has  
17 had." Do you think that's an incredible statement?

18 MS. DECAIRE: Same objection.

19 THE WITNESS: I mean, the statement  
20 is what it is. I don't have an opinion  
21 that it's incredible or not.

22 BY MR. HERMAN:

23 Q. Did you ask him to compare it to other  
24 selling tools that Interface has had in the last  
25 23 years?

1 CLARKE B. NELSON

2 THE WITNESS: Well, again, I haven't  
3 spoken to Mr. Gerson, but my understanding  
4 of his title is that he is the senior  
5 director of customer experience. And I'd  
6 have to refresh my memory of his  
7 declaration, but my recollection is that he  
8 certainly is engaged in understanding the  
9 marketplace, understanding the competitive  
10 positioning of Interface with respect to  
11 its competitors, and therefore, would  
12 certainly have that perspective and ability  
13 to make that statement.

14 BY MR. HERMAN:

15 Q. But you didn't test that specific  
16 statement with Mr. Gerson, correct?

17 A. Incorrect.

18 Q. You said you didn't speak to Mr. Gerson.

19 A. That's correct.

20 Q. So with respect to this statement that,  
21 "Competitors believe that Interface's TacTiles  
22 connectors are Interface's strongest selling point,"  
23 how did you personally test that statement?

24 A. Again, I looked at the documentation that  
25 was made available to me to understand and confirm

1 CLARKE B. NELSON

2 that there is consistent information with that kind  
3 of a statement and found that to be the case, as well  
4 as the discussions and declarations -- excuse me, the  
5 discussions that I had and the declarations that I  
6 read of other individuals in this matter that further  
7 confirm or add to the veracity of that statement.

8 Q. Wouldn't it be a fair reference from  
9 looking at Exhibit 41 that actually the i2 modular  
10 product line is one of Interface's most powerful  
11 selling tools and TacTiles is just, quote, another  
12 recent innovation?

13 MS. DECAIRE: Object to the form.

14 THE WITNESS: The document says what  
15 it says. I'll note that this is a -- an  
16 RFP, or a request for proposal, for a  
17 specific customer, and presumably the RFP  
18 was prepared with that in mind. Beyond  
19 what the document states, I don't know that  
20 I can comment further on your inference or  
21 your suggestion.

22 BY MR. HERMAN:

23 Q. Well, let's take a look at the -- a little  
24 more detail in the document. If you turn to the  
25 third page of the document, which is a letter from

1 CLARKE B. NELSON

2 about is reputation as an innovator?

3 A. Sure.

4 MR. LUNDIN: I think that's all I've  
5 got.

6 THE VIDEOGRAPHER: Going off.

7 MS. DECAIRE: Not yet. I don't have  
8 any questions for you, but I do need to  
9 designate the transcript highly  
10 confidential, attorneys' eyes only. We  
11 will de-designate as quickly as we get the  
12 transcript. And I thank you for your time,  
13 and we'll close the deposition.

14 THE VIDEOGRAPHER: Off the record at  
15 7:42 p.m.

16 (Deposition was concluded at 7:42 p.m.)  
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